

**EXHIBIT C**  
**(REDACTED)**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No.  
RESIDENTIAL CAPITAL, LLC, et. al., 12-12020 (MG)  
Debtors.

-----x

VIDEOTAPE DEPOSITION OF JOHN MACK

New York, New York

November 14, 2012

9:53 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27647-A

1                   JOHN MACK

2 because I'm a Comcast customer. I have  
3 another one at Microsoft that's 33 Iron  
4 Mask Road, something like that.

5                   I don't use any of them, I just  
6 have them.

7       Q.     Okay. Now, what e-mail address  
8 did you use for correspondence, e-mail  
9 correspondence related to ResCap?

10      A.     Only John\_E\_Mack.

11      Q.     As a matter of practice, being a  
12 director of a number of boards, how do you  
13 deal with, in terms of maintaining, if you  
14 do, the hard copy and electronic materials  
15 you receive related to the various board  
16 positions you hold?

17      A.     It varies with boards. One of  
18 my boards uses a service called Board  
19 Books to provide board information to the  
20 directors. Otherwise, I just use the MSN  
21 e-mail address, and I would have folders  
22 within the MSN e-mail address to store  
23 items related to a particular company.

24      Q.     How about physical materials  
25 that are sent out, like board books and

1                   JOHN MACK

2       things like that, what do you do with  
3       those?

4       A.     Well, usually we get them at  
5       meetings, and I tend to just leave them at  
6       the meetings, so I don't have to carry  
7       them home.

8       Q.     If they're sent to you in  
9       advance, what do you do with them?

10      A.     I might still have them.

11                  A lot of times I take the  
12       materials out and use the binders for  
13       other things.

14      Q.     Do you maintain any type of  
15       notebook or diary?

16      A.     No.

17      Q.     Do you have a physical or  
18       electronic calendar?

19      A.     Yes, I have, I use Outlook.

20      Q.     And do you ever retain hard copy  
21       materials?

22      A.     I won't say that I don't, but I  
23       generally speaking do not.

24      Q.     Would you look at the subpoena  
25       which is Exhibit 91 in front of you, which

1                   JOHN MACK

2     is the second document.

3                   (9019 Exhibit 91, subpoena,

4     marked for identification, as of this  
5     date.)

6     A.     This document, yes.

7     Q.     Did you understand that you were  
8     served a subpoena to appear today?

9     A.     No, this is the first I heard  
10    about it.

11    Q.     Did you make an effort to look  
12    for any of the documents that were called  
13    for by the subpoena?

14    A.     I have been asked by the  
15    attorneys, do I have any documents, and I  
16    have responded to that that I don't.

17         But I was not aware of the  
18    subpoena per se, so.

19    Q.     When you said you don't, you are  
20    saying you didn't have an e-mail file that  
21    related to your service on ResCap?

22    A.     I usually delete the e-mails.

23    Q.     I'm sorry, the question is, do  
24    you have an e-mail file --

25    A.     Yes, I do.

1                   JOHN MACK

2       Q. -- that relates to your service  
3       on ResCap.

4       A. Yes.

5       Q. And when did you delete the  
6       e-mails that were in that e-mail file?

7                   MR. PIEDRA: Object to the form.

8       A. Well, I mean kind of as you go  
9       along.

10      Q. So you are saying it's a file  
11     that never has anything in it?

12      A. No, it has things in it. But,  
13     you know, a lot of it is just meeting  
14     notices and so on and so forth. When the  
15     meetings happened, I could delete it. I  
16     mean it's...

17      Q. Did you look at your computer  
18     and look at your, to see whether or not  
19     you had a file related to ResCap, in  
20     response to the subpoena?

21      A. No, because I didn't know I had  
22     the subpoena.

23      Q. Okay. So you've not searched  
24     your computer for that purpose; is that  
25     fair?

1                   JOHN MACK

2       A.     For that purpose, yes.

3       Q.     Okay.

4       RQ           MR. MOLONEY: We would call for  
5                   a review of those documents and their  
6                   production.

7       Q.     Did you look in your, to see  
8                   whether or not you had any hard copy  
9                   materials related to ResCap in your home?

10      A.     No.

11      Q.     Because you didn't know that you  
12                  were subject to a subpoena request to do  
13                  so?

14      A.     Correct.

15      Q.     How are you compensated for your  
16                  ResCap-related work?

17      A.     There is a fixed fee retainer  
18                  paid monthly. There are meeting  
19                  attendance fees. There are fees for  
20                  committee memberships. And then, of  
21                  course, we are reimbursed for our direct  
22                  expenses, travel expenses and so forth.

23      Q.     Do you have any additional  
24                  incentive arrangements concerning other  
25                  compensation?

1                   JOHN MACK

2         A.        No.

3         Q.        What type of insurance and/or  
4         indemnification arrangements are in place,  
5         related to your service on the ResCap  
6         board?

7         A.        There is a D&O policy that all  
8         the board members have.

9         Q.        Do you understand that you're,  
10        whether or not you are indemnified by Ally  
11        Financial, Inc. or AFI?

12        A.        I believe they are part of the  
13        D&O policy.

14        Q.        Do you understand whether or not  
15        you have an indemnity from them?

16        A.        I believe we do, yes.

17        Q.        Okay. If you look at, back at  
18        the prior exhibit.

19        A.        Exhibit -- the first one?

20        Q.        Exhibit 90.

21        A.        Okay.

22        Q.        This is an e-mail that relates  
23        to your appointment. And paragraph 2 at  
24        the bottom of the page says, "It will help  
25        insulate Ally Financial from liability for

1                   JOHN MACK

2 indemnifying these individuals, if they  
3 are ever sued in connection with their  
4 services as directors on the ResCap  
5 board."

6                   He's talking about basically  
7 employment being done by ResCap itself,  
8 rather than Ally, because it goes on to  
9 say, under the AFI bylaws, if AFI asks  
10 someone to serve, they're covered.

11                  Do you know whether or not  
12 you've secured a request from AFI that  
13 requested you to serve?

14                  MR. PRINCI: Objection as to  
15 form.

16                  If you understand the question,  
17 you can answer it.

18                  A. Yes. I understood that the Ally  
19 board approved, and I don't want to be too  
20 technical here, approved my service as a  
21 director. They are the shareholder, or  
22 were the shareholder at the time.

23                  Q. So it would be your position  
24 that they actually, you are serving at the  
25 request of Ally Financial and subject to

1                   JOHN MACK

2       Q.     You may answer.

3                   MR. PRINCI: You can answer, if  
4       you understand the question.

5       A.     Yes, I knew that it was a  
6       difficult situation and that it would be  
7       challenging. But as I tell people, nobody  
8       invites me on the country club board. I  
9       get invited on the boards that need help.

10      Q.     Help doing what, though?

11      A.     Restructuring, if necessary,  
12       financial management, financing.

13      Q.     Okay. I'd like to show you the  
14       next exhibit which is Exhibit 92.

15                   (9019 Exhibit 92, 10/19/11  
16       e-mail from Michael Carpenter, Bates  
17       ALLY 0142018 through 022, marked for  
18       identification, as of this date.)

19      A.     Okay.

20      Q.     You are not shown as being  
21       copied on this, but it creates a timeline.  
22       It's an e-mail from Michael Carpenter  
23       dated Wednesday, October 19, 2011. And  
24       you see he says, "This letter is from the  
25       law firm and the lawyer that pursued BofA

1                   JOHN MACK

2       and negotiated the \$8.5 billion  
3       settlement. Let the games begin."

4                   And you see it attaches a letter  
5       from a woman by the name of Kathy Patrick.

6       A.     Uh-hum.

7       Q.     And so my question is, first,  
8       have you ever seen this e-mail or letter  
9       before?

10      A.     No.

11      Q.     Were you told, before joining  
12       the ResCap board, about Ms. Patrick's  
13       demand?

14      A.     No.

15      Q.     Were you told the games had  
16       begun?

17      A.     No.

18                  MR. PRINCI: Objection as to  
19       form.

20      Q.     At what point after joining the  
21       ResCap board did you learn about this  
22       demand and about this issue?

23      A.     Well, Ms. Patrick's name came  
24       up, it would have been in late April, mid  
25       to late April or early May of this year,

1                   JOHN MACK

2 before the petition was filed.

3 Q. So between -- between  
4 October 19th, 2011, when this e-mail,  
5 which is Exhibit 92, is dated, and April  
6 or May, you never heard that there was a  
7 demand being made for a settlement of the  
8 RMBS claims?

9                   MR. PRINCI: Objection as to  
10 form.

11                  MR. PIEDRA: Objection to form.

12 A. Yeah, I think that's correct. I  
13 don't think I knew about it, other than,  
14 broadly speaking, that we would have been  
15 in conversations with some investors; but  
16 beyond that, no, nothing specific.

17 Q. When you say --

18 A. And nothing with her name  
19 attached it to until very late in the  
20 process.

21 Q. So you knew nothing specific and  
22 nothing with her name attached to it,  
23 until basically April, May; is that fair?

24 A. Correct.

25 Q. What did you know earlier than

1                           JOHN MACK

2       that, and when?

3       A.     About?

4       Q.     About this general topic of  
5       potential settlement of the RMBS claims.

6       A.     Very little about settlement of  
7       the RMBS claims. That they were out  
8       there, yes.

9       Q.     Right. Okay. And so when did  
10      you first learn that there was a serious  
11      effort being made to try to settle those  
12      claims?

13      A.     That would have been --

14                          MR. PRINCI: Objection as to  
15                          form.

16      A.     -- in late April or May.

17      Q.     Thank you.

18                          Now, were you ever involved in  
19                          any negotiations with Ms. Patrick  
20                          concerning the RMBS settlement?

21      A.     No.

22      Q.     Have you ever spoken to  
23                  Ms. Patrick?

24      A.     I introduced myself at the  
25                  bankruptcy court hearing, first day or

1                   JOHN MACK

2 second day. I was introduced.

3                 Q. So I take it it's fair to say  
4 you never directly participated in any of  
5 the negotiations of that settlement?

6                 MR. PIEDRA: Objection to form.

7                 A. That is correct.

8                 Q. And did you indirectly  
9 participate in some way in those  
10 negotiations?

11                MR. PRINCI: Objection as to  
12 form.

13                A. No.

14                Q. Okay. When you learned about  
15 them in April or May, at that point it  
16 was -- is it fair to say, was it  
17 understood by the ResCap board that any  
18 resolution of these claims for a  
19 settlement would have to be accomplished  
20 in a Chapter 11 proceeding?

21                MR. PIEDRA: Object to the form.

22                A. They would have been part of the  
23 bankruptcy process. I think I can say  
24 that --

25                Q. Okay.

1                   JOHN MACK

2         A. -- from my standpoint as a  
3         director. I don't know what other members  
4         of the board thought.

5         Q. At that time you were already  
6         far along with something called Project  
7         Bounce, right?

8         A. Yes.

9         Q. And you had already been talking  
10       about DIP financing, and you had been  
11       talking about stalking horse bidders,  
12       right?

13       A. That's correct.

14       Q. So you understood this was going  
15       to be folded in, this was going to be part  
16       of a bankruptcy process, right?

17       A. It would have -- it was not  
18       certain until very close to the petition  
19       day. The sense that I had was that this  
20       was going to be difficult, if not, and was  
21       unlikely, until very close to the petition  
22       date, even though conversations had been  
23       going on.

24       Q. Okay. But if it happened, it  
25       was going to be part of the bankruptcy?

1                   JOHN MACK

2         A.     It was desirable. It would be  
3     desirable, but it was not thought likely,  
4     until very close to the petition date.

5         Q.     Is it also fair to say that by  
6     April or May, based on the stalking horse  
7     bids you had received and the information  
8     you knew about ResCap's financial  
9     situation at that point in time, that you  
10    knew that, as a result of this bankruptcy  
11    process, it was at least unlikely that AFI  
12    would end up being a shareholder of ResCap  
13    on a go-forward basis?

14                  MR. PRINCI: Objection as to  
15                  form.

16                  MR. PIEDRA: Objection to form.

17                  MR. PRINCI: If you understand  
18                  the question, you can answer.

19         A.     By mid-April, yes, that was well  
20    understood.

21         Q.     Right. And so would you agree  
22    with me that in such circumstances, that  
23    there was at least a risk that AFI might  
24    perceive its primary objective to be  
25    obtaining a release from the RMBS

1                   JOHN MACK

2     claimants, even if the price for such a  
3     release was a higher-than-justified claim  
4     against ResCap's subsidiaries?

5                   MR. PRINCI: Objection as to  
6     form.

7                   MR. PIEDRA: Objection to form.

8                   Q.     You may answer.

9                   A.     I don't know that.

10                  Q.     Well, if ResCap is going to have  
11     no continuing interest in the company,  
12     what interest would they have, as a result  
13     of the outcome of these --

14                  MR. MOLONEY: Rephrase.

15                  Q.     If AFI is going to have no  
16     continuing interest in ResCap, what  
17     interest would they have, other than  
18     obtaining a release from a settlement with  
19     Ms. Patrick's group?

20                  MR. PRINCI: Objection as to  
21     form.

22                  MR. PIEDRA: Objection to form.

23                  A.     I can't speak for them, being  
24     AFI.

25                  Q.     Okay. Did the board take any

1                   JOHN MACK

2     steps to protect against the risk that I  
3     just identified?

4                   MR. PIEDRA: Objection to form.

5                   MR. PRINCI: Objection as to  
6     form.

7                   A.     Could you -- I'm not sure I  
8     understand your question.

9                   Q.     Okay. I identified what I  
10    believe is a risk, which is, which is that  
11    to the extent that AFI controlled the  
12    negotiations with Ms. Patrick, their  
13    primary objective would be to obtain a  
14    settlement, rather than a lower claim.  
15    And I'm asking whether the board took any  
16    steps to protect against that risk.

17                  MR. PRINCI: Objection, assumes  
18    a facta not in evidence. Object to  
19    the form.

20                  But if you understand the  
21    question, you may answer.

22                  A.     Well, I can't speak for AFI. I  
23    can only say that at ResCap, I didn't know  
24    AFI was having conversations with  
25    Ms. Patrick. I had no idea.

1                   JOHN MACK

2       Q.     Now, what did you understand --  
3                   who did you understand was the business  
4                   person that was taking the leading role in  
5                   the RMBS settlement negotiations with  
6                   Ms. Patrick?

7       A.     At ResCap, it would have been  
8                   Tom Marano.

9       Q.     Was your understanding that he  
10                  was the one taking the lead in the  
11                  negotiations?

12      A.     No.

13      Q.     Who did you understand was  
14                  taking the lead in the negotiations?

15      A.     Our advisors. In this case, it  
16                  would have been people at, attorneys at  
17                  MoFo.

18      Q.     Okay. And what attorney?

19      A.     I don't recall, specifically,  
20                  but I would have to -- I would have to say  
21                  Gary Lee, probably.

22      Q.     Is it fair to say that you  
23                  viewed MoFo and Gary Lee as the attorneys  
24                  for ResCap?

25      A.     Oh, they are.

1                   JOHN MACK

2         Q.     What about K&E and Timothy  
3     Devine, did you view them as your lawyers  
4     or as AFI's lawyers or something else?

5                   MR. PRINCI: Objection as to  
6     form.

7         A.     AFI's lawyers.

8                   MR. PRINCI: Excuse me one  
9     second. Just pause for one second,  
10    Tom.

11                  MR. MOLONEY: Wait a second.  
12    You can just tell them that he needs  
13    to wait -- I'll put it on the record  
14    that you need to wait to allow  
15    Mr. Princi to state his objection.

16                  I think we should note now that  
17    counsel is conferring with the  
18    witness, and it's not appropriate.

19         Q.     What did you understand Timothy  
20    Devine's position to be?

21         A.     I don't know Timothy Devine.

22         Q.     Okay. Do you know whether or  
23    not he had a role in negotiating the RMBS  
24    deal with Ms. Patrick?

25         A.     No.

1                   JOHN MACK

2         Q.     Did it concern you, if he was  
3     the chief of litigation for AFI, and he  
4     took the lead in the settlement  
5     negotiations and negotiated material terms  
6     of the RMBS with Kathy Patrick, without  
7     the involvement of Morrison & Foerster?

8                   MR. PIEDRA: Objection to form.

9                   MR. PRINCI: Objection to form.

10                  MR. MOLONEY: Noted.

11         Q.     You may answer.

12         A.     Generically speaking, yes, I  
13     would not understand that.

14         Q.     As of May 2012, was there any  
15     real connection between the amount that  
16     the ResCap board was going to require AFI  
17     to contribute to a Chapter 11 resolution  
18     and the size of the RMBS claim that was  
19     negotiated with Ms. Patrick?

20         A.     No.

21         Q.     So at least as of May 2012,  
22     there was no additional cost to AFI in  
23     agreeing to a larger claim from  
24     Ms. Patrick's clients, in return for an  
25     AFI release, correct?

1                   JOHN MACK

2                   MR. PIEDRA: Objection to form.

3                   MR. PRINCI: Objection to form.

4                   A. I'm not sure I understand. I'm  
5 not -- I'm ResCap, I'm not part of AFI.

6                   So I don't understand why -- I just don't  
7 understand.

8                   Q. That's okay. Let's change  
9 topics.

10                  As a member of the ResCap audit  
11 committee, what involvement, if any, did  
12 you have in reviewing AFI or ResCap group  
13 financial statements?

14                  A. We met at least quarterly to  
15 review that quarter's financial  
16 statements.

17                  Q. And I take it when you joined  
18 the board in 2011, ResCap was no longer  
19 filing public financial statements itself,  
20 correct?

21                  A. Correct.

22                  Q. It was still preparing financial  
23 statements, correct?

24                  A. Correct.

25                  Q. Was it preparing stand-alone

1                   JOHN MACK

2 financial statements, as well as  
3 consolidated financial statements?

4                   MR. PIEDRA: Object to the form.

5 A.       We prepared consolidated ResCap  
6 financial statements.

7 Q.       And was there also -- were  
8 stand-alone ResCap financial statements  
9 also prepared --

10                  MR. PRINCI: Objection as to  
11 form.

12 Q.       -- and reviewed by the board  
13 that showed nonconsolidated financial  
14 statements for just the parent company?

15 A.       For just -- no, not to my  
16 knowledge.

17 Q.       Okay.

18 A.       They may be prepared, I just  
19 don't know.

20 Q.       Okay. Did you also, in your  
21 capacity as a member of the ResCap audit  
22 committee or otherwise, review the  
23 publicly-filed financial statements of the  
24 parent company, AFI?

25 A.       No.

1                   JOHN MACK

2                 Q.     Okay. Now I'm going to ask you,  
3     you may not have seen it, but if you have,  
4     would you look at what we marked as  
5     Exhibit Number, what is it, 97?

6                 MR. PIEDRA:  93.

7                 MR. PRINCI: Tom, are you  
8     talking about this?

9                 MR. MOLONEY:  93, yeah, 93.

10                (9019 Exhibit 93, Ally 10-Q,  
11     marked for identification, as of this  
12     date.)

13                Q.     I'm just going to have -- first,  
14     you don't need to read the whole thing,  
15     but is this a document you would have  
16     reviewed, or no?

17                A.     No.

18                Q.     Okay. I'm going to focus you  
19     just on one page, which is at the end of  
20     the document which is page 73. Page 73.

21                A.     Yes.

22                Q.     Now, looking at page 73 you see  
23     the line that says "potential losses"?

24                A.     Yes.

25                Q.     Could you read that to yourself

1                   JOHN MACK

2 for a moment.

3                   MR. PRINCI: You are talking  
4 about the heading "Potential Losses"?

5                   MR. MOLONEY: Yeah, the  
6 paragraph that follows.

7 Q. Just read it to yourself.

8                   (Witness complies.)

9 A. Okay.

10 Q. Were you aware that something  
11 like this was being put in AFI's public  
12 financial statements?

13 A. Yes, this has been brought to my  
14 attention. I can't remember under what  
15 the context was.

16 Q. Okay. Now, do you know what  
17 work was done to create this zero to  
18 \$4 billion estimate?

19 A. No.

20 Q. Okay. Let's look at the next  
21 document, which is a document I think you  
22 would have been familiar with, which is  
23 the ResCap board materials.

24                   (9019 Exhibit 94, ResCap audit  
25 committee minute dated 5/1/12, Bates

1                   JOHN MACK

2                   RC 40022273 through 367, marked for  
3                   identification, as of this date.)

4                   Q.     This is Exhibit 94. And this is  
5                   a minute of the audit committee that  
6                   occurred on May 1, 2002?

7                   A.     Uh-hum -- 2002?

8                   2012.

9                   Q.     2012, thank you.

10                  Now I'm going to focus in on the  
11                  fourth page of the document, which is  
12                  page number 2 of the audit committee.

13                  First, did you attend this audit  
14                  committee meeting?

15                  A.     Yes.

16                  Q.     You see the presentation of  
17                  ResCap, "Reasonably possible range of  
18                  loss"?

19                  A.     You are on which page?

20                  Q.     It's actually, starting from the  
21                  front, go to the second page, the back of  
22                  the second page. Page 2 of the  
23                  presentation.

24                  A.     Yes, yes, I have it. Sorry.

25                  Q.     It's bearing Bates stamp number

1                   JOHN MACK

2                   RC 40022276.

3                   So looking at that page, do you  
4                   know why that was prepared for the audit  
5                   committee at this point in time?

6                   A.     This page was an explanation of  
7                   the changes in the reported reserve that  
8                   had been in the financial statements.

9                   Well, it says "Third quarter 2011." And  
10                  then this was going to be the number that  
11                  was then in the 4 billion, the zero to 4  
12                  billion change. This was the supporting  
13                  document.

14                  Q.     So this was the supporting  
15                  document for the AFI entry in their  
16                  consolidated financial statements; is that  
17                  fair?

18                  MR. PRINCI: Objection as to the  
19                  form.

20                  A.     Perhaps. Again, I'm focused  
21                  more, as a director, I focused more on the  
22                  ResCap number, as opposed to the AFI  
23                  number.

24                  Q.     This number was really coming  
25                  from ResCap, in terms of the R&W

1                   JOHN MACK

2 liability, right?

3                 A. Yes. And if it ends up in AFI,  
4 that's one thing; but I'm focused on it as  
5 a ResCap number.

6                 Q. Right. I take it you both used  
7 Deloitte as your accountants, that's both  
8 boards?

9                 A. I don't know who they used. We  
10 used Deloitte.

11                Q. And this is giving you a range.  
12 Basically, the range of liability could be  
13 somewhere between 829 million, and outside  
14 range is going to be \$4 billion; is that  
15 fair?

16               A. Yes.

17               Q. And it says in footnote C, you  
18 see that? It says, "Estimated lifetime  
19 losses multiplied by risk funds' audit  
20 defect rate and adjusted for litigation  
21 defense."

22               That's how they computed the  
23 exposure behind 2013, of potentially  
24 1.255 billion, do you see that?

25               A. Yes.

1                   JOHN MACK

2       Q.     Can you tell us what they used  
3     as the audit defect rate?

4       A.     No, I cannot tell you. From  
5     this schedule, I cannot tell you.

6                   Our defect rate was a range of  
7     something like 9 to 29 percent.

8       Q.     Okay. And there's a reference  
9     to adjusted for litigation defenses.

10                  Do you know what litigation  
11    defenses are being referred to there?

12       A.     No.

13       Q.     Did you ever get an explanation  
14    as to what the litigation defenses were to  
15    this claim?

16       A.     I don't recall.

17       Q.     You don't recall ever receiving  
18    an explanation about the defenses to this  
19    claim?

20                  MR. PRINCI: Objection, asked  
21    and answered.

22                  You can answer again.

23       A.     I don't specifically recall a  
24    number being attached to it.

25       Q.     I'm not asking for a number.

1                   JOHN MACK

2                   I'm asking, did you ever get an  
3                   explanation of what litigation defenses  
4                   might be available to ResCap to defend  
5                   against these potential claims?

6                   MR. PIEDRA: Object to the form.

7                   A.       No.

8                   Q.       For example, were you ever  
9                   informed that a number of the claims could  
10                  be eliminated, due to statute of  
11                  limitations defenses?

12                  MR. PRINCI: Just to the extent  
13                  that you were informed of any such  
14                  thing by counsel, then I'm going to  
15                  direct you not to answer.

16                  MR. MOLONEY: Okay. I'm just  
17                  withdrawing my question. We will go  
18                  on to another area.

19                  Q.       Now, if we look at the -- before  
20                  we leave this page, if we look at the  
21                  number 400, that's -- this estimate  
22                  includes securities litigation, right?

23                  A.       Yes, it says so.

24                  Q.       Okay. Thank you.

25                  And now, going on in the same

1                   JOHN MACK

2                   MR. PIEDRA: Objection as to  
3                   form.

4                   MR. PRINCI: Misstates the  
5                   facts.

6                   A. Yes. I was going to say no,  
7                   that's not the liability to ResCap.

8                   Q. Isn't that the amount that  
9                   ResCap is agreeing to pay, the settlement  
10                  plan the ResCap group is agreeing to pay  
11                  \$8.7 billion to settle the claim?

12                  MR. PRINCI: Objection as to  
13                  form.

14                  A. That is correct, they are  
15                  agreeing to pay that.

16                  Q. Right. And why -- if their  
17                  maximum exposure could only be \$4 billion,  
18                  why would they agree to pay 8.7 billion?

19                  MR. PRINCI: Objection as to  
20                  form.

21                  A. I don't know that the 4 -- the 4  
22                  billion is not the maximum, that's just an  
23                  estimate. This number is supposed to be,  
24                  it is negotiated; it is a cap, in essence.

25                  Q. Okay. You are saying the

1                   JOHN MACK

2       \$4 billion was an estimate, but this was a  
3       negotiated number, the 8.7?

4       A.     Correct.

5       Q.     Now, it wasn't determined by a  
6       court that ResCap was liable for \$8.7  
7       billion, right?

8       A.     That is correct.

9       Q.     So it was just determined by two  
10      human beings who negotiated a number, \$8.7  
11      billion, right?

12                  MR. PRINCI: Objection as to  
13      form.

14       A.     It was a negotiated number.

15       Q.     Who were the two people who  
16      negotiated the number?

17                  MR. PRINCI: Objection as to  
18      form.

19       A.     Our advisors from MoFo, and  
20      Kathy Patrick, representing the investors.

21       Q.     Now, the person who was  
22      representing you, your advisor for MoFo,  
23      you would think that they should negotiate  
24      a number that's consistent with what they  
25      think are their potential liabilities, if

1                   JOHN MACK

2       they go to court, right?

3                   MR. PIEDRA: Objection to form.

4                   MR. PRINCI: Objection as to  
5                   form.

6                   A.     No.

7                   Q.     No? Why?

8                   A.     They can negotiate a number that  
9                   is in the best interests of trying to get  
10                  a transaction accomplished.

11                  Q.     Even if it doesn't bear any  
12                  resemblance to what the outcome would be,  
13                  if the case was actually tried in court?

14                  MR. PIEDRA: Objection to form.

15                  A.     I don't know that it would or  
16                  wouldn't bear any resemblance to what the  
17                  actual number would be. I couldn't  
18                  predict the future like that.

19                  Q.     Did you get any guidance at the  
20                  board meeting as to what the number would  
21                  be, if this claim was actually litigated  
22                  rather than settled?

23                  A.     No, not that I recall.

24                  Q.     So this was just a number needed  
25                  to do a transaction, is what you are

1                   JOHN MACK

2 saying, like an M&A deal?

3                   MR. PIEDRA: Objection to form.

4                   MR. PRINCI: Objection as to  
5 form.

6                   A. No.

7                   Q. How was it different?

8                   A. It was different, because we  
9 were, we thought the number was -- well,  
10 it was, by evidence, lower than two other  
11 settlements, one of which Ms. Patrick had  
12 been engaged with. That was the Bank of  
13 America. And it was within the range of  
14 defects that we his -- we, ResCap,  
15 historically had. It was kind of the  
16 midpoint of that range. So in a market  
17 sense, it seemed to be a reasonable  
18 number.

19                   Q. Other than those two criteria,  
20 were there any other criteria that you  
21 relied on, in terms of approving the  
22 settlement?

23                   MR. PIEDRA: Object to the form.

24                   MR. PRINCI: Objection as to  
25 form.

1                   JOHN MACK

2         A.     Not that I recall at the time.

3         Q.     Okay. Let's see if we can  
4 understand whether it's lower than the  
5 BofA settlement.

6                   [REDACTED] [REDACTED]

7                   [REDACTED]

8                   [REDACTED] [REDACTED]

9                   [REDACTED] [REDACTED] [REDACTED]

10                  [REDACTED] [REDACTED]

11                  [REDACTED]

12                  [REDACTED] [REDACTED]

13                  [REDACTED] [REDACTED] [REDACTED] [REDACTED]

14         Q.     Okay. And now, when we looked  
15 at Exhibit -- the prior exhibit, there was  
16 also a further discount of the number for  
17 legal defenses.

18                  Do you recall seeing that?

19         A.     Uh-hum, uh-hum.

20         Q.     Was a legal defense discount  
21 applied to the number that's on this page?

22                  MR. PIEDRA: Object to the form.

23         A.     Not that I recall.

24         Q.     Okay. So no consideration of  
25 legal defenses?

1 JOHN MACK

2 MR. PIEDRA: Objection to form.

3 MR. PRINCI: Objection.

4 A. No, I don't think that was part  
5 of what my consideration was.

6 Q. Now, you say it was less than  
7 the BofA settlement; is that what you are  
8 telling us?

9 A. The defect rate, our defect  
10 rate.

11 Q. I know your defect rate. But  
12 the settlement amount actually was,  
13 ironically, more than the BofA settlement,  
14 right?

15 MR. PIEDRA: Objection to the  
16 form.

17 Q. BofA settled for \$8.5 billion,  
18 we saw in the prior exhibit.

19 MR. PIEDRA: Do you want an  
20 answer to the last question?

21 MR. PRINCI: Which question do  
22 you want him to answer?

23 Q. The settlement amount proposed  
24 to be paid by ResCap is actually more than  
25 the amount proposed to be paid by BofA to

1                   JOHN MACK

2 settle its claims, correct?

3                   MR. PIEDRA: Objection to form.

4                   MR. PRINCI: Objection as to  
5 form.

6                   A. The BofA defect rate was higher.

7 That's what I was looking at.

8                   Q. Putting aside -- that's not my  
9 question.

10                  Did you hear my question?

11                  MR. PRINCI: You asked a  
12 multiple number of questions.

13                  MR. MOLONEY: I did not, I asked  
14 one question.

15                  Q. You may answer it.

16                  A. I'm not sure I see on this  
17 schedule what the BofA settlement number  
18 was.

19                  Q. Well, if you go back to the  
20 prior -- you have an exhibit in your pile  
21 that says that, for Michael Carpenter, the  
22 one we looked at earlier. It says BofA  
23 negotiated the \$8.5 billion settlement.

24                  Do you recall seeing that?

25                  A. In this room?

1                   JOHN MACK

2       Q.     Yeah.

3       A.     Yes.

4       Q.     You know that as a matter of  
5     just public knowledge, that BofA  
6     settlement was for \$8.5 billion, right?

7                   MR. PRINCI: Objection to form.

8       Q.     You don't? You don't keep up  
9     with your old bank?

10      A.    I actually don't.

11      Q.    Okay, fair enough.

12                  Now, it has a number here, next  
13     to BofA, of \$15 billion. BofA is --  
14     assume it's correct, it's \$8.5 billion.

15                  BofA is not settling its claim  
16     for \$15 billion, right?

17                  MR. PIEDRA: Objection to form.

18                  MR. PRINCI: Objection as to  
19     form.

20      A.    I don't know.

21      Q.    Take it as a given with the 8.5.  
22     So the \$15 billion number, what does that  
23     represent?

24                  MR. PRINCI: Objection as to  
25     form.

1                   JOHN MACK

2         A.     I'm assuming that is 36 percent  
3     times a protected loss number.

4         Q.     Now, do you know whether or not  
5     the BofA settlement bore any resemblance  
6     to what you call the defect rate here, or  
7     is there any correlation between the  
8     defect rate and the amount that BofA  
9     actually paid to settle its lawsuit?

10                MR. PIEDRA: Objection to form.

11                MR. PRINCI: Objection as to  
12     form.

13         A.     The answer is no.

14         Q.     You don't know?

15         A.     No.

16         Q.     If there was no correlation  
17     between the amount that BofA paid to  
18     settle its lawsuit and the defect rate,  
19     then this chart is basically useless,  
20     right?

21                MR. PIEDRA: Objection to form.

22                MR. PRINCI: Objection as to  
23     form.

24         A.     I don't know. I don't  
25     understand that.

1                   JOHN MACK

2                   It's not useless, but...

3                 Q.     Well, let's take it logically,  
4                 okay. The fact that there's a defect in a  
5                 mortgage doesn't mean that the mortgage is  
6                 actually -- there's going to be a loss  
7                 associated with the mortgage, correct?

8                 A.     That is correct.

9                 Q.     And even if there's a loss  
10                 associated with the mortgage and there's a  
11                 defect, doesn't necessarily mean that  
12                 ResCap is going to be liable to buy it  
13                 back, right?

14                 MR. PRINCI: Objection as to  
15                 form.

16                 Q.     They could have legal defenses,  
17                 statue of limitations, causation, right?

18                 MR. PRINCI: Objection as to  
19                 form.

20                 Which question are you asking,  
21                 the first one or the second one?

22                 Q.     The fact that there's a loss  
23                 associated with the mortgage, which is a  
24                 defect, doesn't necessarily mean that  
25                 there's a liability to a ResCap group,

1                   JOHN MACK

2       with respect to that mortgage, to buy it  
3       back, correct?

4                   MR. PRINCI: Objection as to  
5                   form.

6                   Q.     You may answer.

7                   A.     We could be obligated to buy it  
8       back. Depends on the agreements.

9                   Q.     Correct, you may or may not be,  
10      right?

11                  A.     Right.

12                  Q.     I'm saying on the information  
13      you have here, you can't draw any  
14      correlation between defect rate and what  
15      your liability is. There's no correlation  
16      between those two variables, right?

17                  MR. PIEDRA: Objection to form.

18                  MR. PRINCI: Objection as to  
19      form.

20                  A.     Well, the defect rate -- we have  
21      a historical defect rate which is, created  
22      actual losses.

23                  Q.     Okay. Let me try it a different  
24      way.

25                  Do you know BofA actually issued

1                           JOHN MACK  
2 twice the amount of bonds that ResCap did  
3 and the amount of home loans it had  
4 outstanding was a number that was twice as  
5 large as ResCap?

6                           MR. PIEDRA: Objection to form.

7                           MR. PRINCI: Objection as to  
8 form.

9                           Q. Did you know that?

10                          A. No.

11                          Q. Okay. Assume, for purposes of  
12 my question, that that's a fact, okay?

13                          A. Okay.

14                          Q. And assume that their defect  
15 rate is twice as -- for purposes of  
16 analysis, it's almost as twice as high as  
17 ours, right? ResCap's, right?

18                          MR. PRINCI: Objection as to  
19 form.

20                          Q. Assume that, right?

21                          A. Yes.

22                          Q. They should have paid an amount  
23 twice as large as ResCap, then, to settle  
24 their liability, right?

25                          MR. PRINCI: Objection as to

1                   JOHN MACK

2                   form.

3                 Q.     It's a matter of logic, right?

4                 MR. PRINCI: Objection as to  
5                   form.

6                 A.     I'm not sure that -- it would  
7                   have been negotiated. I'm not sure that  
8                   all the facts are totally comparable in  
9                   every respect, so.

10                Q.     Sitting here today, do you  
11                   really feel that you can draw any comfort  
12                   from the fact that the defect rate was  
13                   35 percent for BofA, to justify the  
14                   settlement that occurred here?

15                MR. PIEDRA: Objection to the  
16                   form.

17                Q.     What comfort do you get to  
18                   justify your settlement from the fact that  
19                   BofA settled for a different amount of  
20                   money involving a different amount of  
21                   bonds with a higher defect rate? What  
22                   comfort do you get that that supports your  
23                   settlement?

24                MR. PIEDRA: Objection.

25                MR. PRINCI: Hold on. There's

1                   JOHN MACK

2                   three questions in sequence.

3                   Which one do you want him to  
4                   answer?

5                   MR. MOLONEY: I'll rephrase.

6                   Q.     Assume BofA settled for a  
7                   different amount of money than ResCap, had  
8                   a larger amount of bonds, had a  
9                   significantly larger amount of lifetime  
10                  losses and was using a larger defect rate.  
11                  And assume further that the amount of  
12                  money was smaller, by BofA.

13                  Why would that support this  
14                  settlement?

15                  MR. PRINCI: Objection as to  
16                  form.

17                  MR. PIEDRA: Objection as to the  
18                  form.

19                  A.     I'm not sure that it would.

20                  I was looking primarily at  
21                  whether this number made sense for us, and  
22                  I thought that it did.

23                  Q.     Why?

24                  A.     It seemed to be --

25                  MR. PRINCI: Objection, asked

1                   JOHN MACK

2                   and answered.

3                   You may answer again.

4                   A.     It seemed to be, given our  
5                   defect rate, it was within -- it was the  
6                   average of our range of defect rates times  
7                   our projected estimated lifetime losses.

8                   MR. PRINCI: Tom, just --

9                   Q.     If you took that same analysis,  
10                  and BofA had a larger set of estimated  
11                  lifetime losses, if I were to tell you  
12                  that the estimated lifetime losses for  
13                  BofA were substantially higher than --

14                  If I were to tell you, based on  
15                  ResCap's own expert, the estimated  
16                  lifetime losses for BofA were a number  
17                  between \$61 billion and \$76.8 billion and  
18                  that, as a percentage, its settlement of  
19                  lifetime losses was between 11.1 to 13.9,  
20                  while the percentage pursuant to lifetime  
21                  losses of the ResCap settlement was  
22                  between 17 and 19 percent, why would you  
23                  draw any comfort from that?

24                  MR. PIEDRA: Objection to form.

25                  MR. PRINCI: Objection as to

1                   JOHN MACK

2                   form.

3                 A. Again, I think it's very  
4                 difficult to compare to BofA, in some  
5                 respects, because of their portfolio  
6                 having been originated largely by the  
7                 company they acquired.

8                 Q. BofA had actually a worse  
9                 portfolio than ResCap, right?

10                MR. PIEDRA: Objection to form.

11                MR. PRINCI: Objection as to  
12                form.

13                A. I would suspect so, but I don't  
14                have facts. I'm not...

15                Q. And the Lehman analysis, do you  
16                know whether Lehman has actually settled  
17                any claims on the basis of a 35 percent  
18                defect rate?

19                A. No, I do not.

20                MR. MOLONEY: Okay, you can take  
21                a break now.

22                MR. PRINCI: Thank you.

23                THE VIDEOGRAPHER: The time is  
24                10:52 a.m. and we are off the record.

25                (Whereupon, there was a recess

1                   JOHN MACK

2                   in the proceedings.)

3                   THE VIDEOGRAPHER: The time is  
4                   11:04 a.m. and we are back on the  
5                   record.

6                   Q.       Are you ready, Mr. Mack?

7                   A.       Yes.

8                   Q.       Okay. Good. Looking still at  
9                   95. I want to go on to under the key  
10                  assumptions, the first key assumption,

11 [REDACTED] [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16                  Do you see that sentence?

17                  A.       Yes.

18                  Q.       Okay. Who negotiated that  
19                  number, the 1 million -- 1 billion 50  
20                  million dollar number?

21                  MR. PRINCI: Objection as to  
22                  form.

23                  A.       The Ally settlement was  
24                  primarily Jonathan Ilany and myself. But  
25                  at this point this was an assumption.

1                   JOHN MACK

2     This was not an actual number. It was not  
3     a fact.

4     Q.     Okay. Did this represent the  
5       settlement that was negotiated between you  
6       and -- who represented Ally in the  
7       negotiations or AFI?

8                   MR. PRINCI: Objection. You got  
9       two questions again, Tom.

10    Q.     Let me ask the question who  
11       represented AFI in the negotiation of the  
12       settlement?

13    A.     Mike Carpenter and Lenard  
14       Tessler.

15    Q.     And just for the record, who are  
16       they?

17    A.     Mike Carpenter is the CEO.  
18       Lenard Tessler is with Cerberus and I  
19       believe is the director of AFI.

20    Q.     And you are saying this  
21       assumption number is not the same as the  
22       number that you negotiated by way of the  
23       settlement; is that correct?

24    A.     At this point in time it was  
25       still an assumption. We did not have an

1                   JOHN MACK

2 agreement.

3                 Q. Okay. At this point in time  
4 what would have been the ask. What were  
5 you and Mr. Ilany asking for on behalf  
6 of -- of ResCap?

7                 MR. PRINCI: Objection as to  
8 form.

9                 A. I think that what I would say is  
10 that we were still in negotiation and that  
11 as opposed to having -- calling it an ask,  
12 let us say that I was -- my argument was  
13 that it needed to be a headline number  
14 that came in at about this range, about  
15 this size, to be credible. Now, you can  
16 call that an ask but I wasn't phrasing it  
17 as an ask.

18                Q. Okay. Now, I want to break that  
19 down. The headline number around this  
20 size, the "this" is referring to the  
21 billion 50?

22                A. About a billion. I wouldn't  
23 have been as precise as a billion 50.

24                Q. And when you say in order for it  
25 to be credible, credible to whom and based

1                   JOHN MACK

2 on what?

3                   MR. PRINCI: Objection as to  
4 form.

5                   A. The overall idea here is that we  
6 were trying to do a more elegant, if  
7 that's a good word, bankruptcy. That we  
8 were trying to put together a package that  
9 included a plan, a contribution from Ally,  
10 a DIP financing, stalking horse bids, a  
11 transaction -- a deal with -- with the  
12 RMBS trustees so that we had a package  
13 that would accrete value to the process  
14 and ultimately to the creditors.

15                  Q. Okay. And one element of that  
16 package was the -- was the Ally  
17 contribution, fair to say?

18                  A. Correct.

19                  Q. Now, in terms of -- in terms of  
20 how you figured out what the right amount  
21 for Ally to bid, what criteria -- to pay,  
22 what criteria did you use?

23                  A. Well, I don't know that I would  
24 phrase it that way. It was a negotiation.

25                  Q. What was the rationale for the

1                   JOHN MACK

2 payment?

3                 A. Well, on our side we, we the  
4 estate, would be getting cash. And on  
5 their side they would be getting releases.

6                 Q. Okay. Okay. And specifically  
7 what -- what claims of what ResCap  
8 entities and end creditors -- I want -- I  
9 want to get a list of what ResCap entity  
10 claims and what -- and what individual  
11 creditor claims were valued for purposes  
12 of this exercise by you?

13                 MR. PRINCI: Objection as to  
14 form.

15                 A. I think I'm answering your  
16 question here, I'm not sure. I was  
17 working in a consolidated sense not in any  
18 specific debtor. There are a number of  
19 subsidiaries in ResCap. I was thinking of  
20 this as a consolidated effort for ResCap.

21                 Q. Well, did you give any  
22 consideration to the unique claims that  
23 the company which you were a director of  
24 might have against -- against AFI?

25                 MR. PRINCI: Objection as to

1                   JOHN MACK

2                   form.

3                 A.    I think, again, it was a  
4                 consolidated thought process not a thought  
5                 process of this particular legal entity  
6                 against another company.

7                 Q.    Okay. What about in terms of  
8                 the claims of individual creditors that  
9                 were going to be settled by, as a part of  
10               this process, how did you value those?

11               MR. PRINCI: Objection as to  
12               form.

13               A.    I was aware that there were a  
14               number of different classes of creditors.  
15               However, my thought process was to try to  
16               be as comprehensive as I could in terms of  
17               the amount of money we raised in the  
18               process without specific regard to any  
19               class of creditor.

20               Q.    Okay. Without getting into a  
21               specific entity what were the -- what were  
22               the specific claims that you thought  
23               against AFI that you thought had value  
24               that they were paying to resolve, if any?

25               MR. PRINCI: Just want to make

1                   JOHN MACK  
2       sure that if your answer comes from  
3       advice of counsel, I don't want you to  
4       share anything that's solely based on  
5       advice of counsel otherwise you can  
6       answer.

7                   THE WITNESS: It pretty much is  
8       based on advice of counsel.

9                   A.     It was the result of a meeting  
10      in which we received a presentation by  
11      counsel as to the types of claims they  
12      thought they could bring.

13                  Q.     Okay. And beyond whatever you  
14      got in terms of types of claims at that  
15      meeting, was that the complete universe of  
16      claims that you had in your arsenal when  
17      you went to negotiate with Mr. Carpenter  
18      or did you think of additional claims or  
19      learn of other claims other than what you  
20      got at that meeting?

21                  A.     There would not have been --  
22      that was a comprehensive presentation. So  
23      I would say there was nothing that would  
24      have been outside of that presentation.

25                  Q.     Now, when you joined the ResCap

1                   JOHN MACK

2     board, did you note that it had public  
3     debt outstanding?

4     A.     Yes.

5     Q.     Do you know about almost a  
6     billion dollars of unsecured notes were  
7     outstanding at ResCap LLC?

8     A.     No.

9     Q.     Do you know that now?

10    A.     I know we had some, yes.

11    Q.     Did you feel that you had a  
12    fiduciary -- when you were negotiating  
13    this deal, did you feel you had a  
14    fiduciary duty to those noteholders?

15    A.     Specifically those noteholders?

16    Q.     Yes.

17    A.     No.

18    Q.     Did you feel you had a specific  
19    duty specifically to creditors of the  
20    entity which you were a director of?

21    A.     Again, I was not -- I was  
22    looking at it on a consolidated basis and  
23    not on a legal entity basis. The debt --  
24    the debt that is on the balance sheet of  
25    ResCap is on a deconsolidated basis with

1                   JOHN MACK

2     several of our subs and with the parent  
3     company.

4       Q.     But as a director of ResCap LLC  
5     wasn't it your primary duty to direct  
6     creditors of ResCap LLC?

7                   MR. PRINCI: Objection as to  
8     form.

9       Q.     You may answer.

10      A.     I viewed our responsibility to  
11     the consolidated group, ResCap and its  
12     subsidiaries.

13      Q.     Okay. In terms of thinking of  
14     claims, did you think of -- were you  
15     informed about a claim based on a breach  
16     of the indenture related to the unsecured  
17     notes, you can just answer yes or no,  
18     based on the sale of substantially all of  
19     the assets of ResCap LLC?

20                  MR. PRINCI: I'm going to direct  
21     him not to answer. I think his  
22     earlier testimony was that his  
23     understanding of claims was  
24     comprehensive --

25                  MR. MOLONEY: He can answer was

1                   JOHN MACK

2                 he aware of this claim, he can say yes  
3                 or no. I'm not asking for any legal  
4                 advice.

5                 MR. PRINCI: That would indicate  
6                 information that was transmitted to  
7                 him by counsel because he's testified  
8                 that his basis for this came from  
9                 counsel. So I'm instructing him not  
10               to answer that. But you can explore  
11               anything he said with the  
12               counterparty. Maybe it comes out that  
13               way.

14               Q. All right. When you met with  
15               Mr. Carpenter to negotiate this deal, what  
16               was your opening ask?

17               A. We did not make an opening ask.

18               Q. What did you tell him you wanted  
19               him to pay?

20               MR. PRINCI: Objection as to  
21               form.

22               A. At the meeting in which we  
23               started this conversation Mr. Carpenter  
24               made a presentation and we listened,  
25               Jonathan and I listened. We did not

1                   JOHN MACK

2 counter. We did not negotiate in that  
3 meeting.

4 Q.        Okay. Let's see if we can put a  
5 time and place on this meeting.

6                   MR. MOLONEY: Do we have this?

7                   Is this part of the exhibits?

8 Q.        Would you look at Exhibit 98 in  
9 your pile.

10                  (9019 Exhibit 98, meeting  
11 minutes, Bates RC40020213-214, marked  
12 for identification, as of this date.)

13 A.        Uh-hum.

14                  MR. PRINCI: Excuse me. Just  
15 give me one second. Bear with me.

16                  Okay, Mr. Moloney.

17 Q.        Did you attend this meeting on  
18 or about January 25, 2012?

19 A.        Yes, I did.

20 Q.        And did you -- if you look at  
21 the minutes of meeting there's a reference  
22 under Executive Session to the fact that  
23 there's a presentation given to the ResCap  
24 board essentially about potential claims  
25 against Ally and an indication of certain

1                   JOHN MACK

2 materials to provide to the board in  
3 advance of the meeting.

4                   Do you see that?

5                   A. Yes.

6                   Q. Did you obtain those materials?

7                   A. If they were provided to the  
8 board I did.

9                   Q. Did you keep those materials?

10                  A. No.

11                  Q. What did you do with them?

12                  A. I left them in the board room.

13                  Q. You left them in the board room  
14 when you left the meeting?

15                  A. Yes.

16                  Q. On a go-forward basis when you  
17 were negotiating with Mr. Carpenter did  
18 you need to consult the materials from  
19 time to time?

20                  A. No.

21                  Q. Is it fair to say your  
22 negotiations with Mr. Carpenter really had  
23 nothing to do with the legal arguments in  
24 those materials?

25                  MR. PRINCI: Objection as to

1                   JOHN MACK

2                   form.

3                 A.    Yes. I'm not going to negotiate  
4                   on legal issues.

5                 Q.    Okay. And then there's a  
6                   reference here to a meeting that occurs  
7                   with Mr. Carpenter right after this board  
8                   meeting. This board meeting starts at  
9                   12:25 and there's a reference to a meeting  
10                  with Mr. Carpenter right after it, right?  
11                  It says approximately 3:00 the meeting was  
12                  adjourned. At approximately --

13                A.    Yes, I see that.

14                Q.    Half hour meeting with  
15                  Carpenter. Is that the meeting -- does  
16                  that kick it off, the process of these  
17                  negotiations?

18                A.    No.

19                Q.    Okay. When was the kick-off  
20                  meeting?

21                A.    It was after this.

22                Q.    Okay. I'm going to show you a  
23                  document which we have marked as  
24                  Exhibit 99.

25                  (9019 Exhibit 99, series of

1                   JOHN MACK  
2                   e-mails, Bates ALLY 0142489; 0142535;  
3                   0142547; 0142563-565, marked for  
4                   identification, as of this date.)

5                 Q.     Take a look at 99. It's just a  
6                 series of e-mails that indicate setting up  
7                 various meetings between yourself and  
8                 Mr. Ilany and Mr. Mack. And the reason  
9                 I'm just doing this is if it's helpful to  
10                you in terms of the timeline. If it  
11                doesn't help you -- but that's what we  
12                found in terms of timeline.

13               A.     Uh-hum.

14               Q.     But can you tell us when  
15               approximately the meeting, the first  
16               kick-off meeting was that you had with  
17               Mr. Mack to discuss -- with Mr. Carpenter  
18               rather, to discuss the Ally contribution?

19               A.     Well, I would have said March or  
20               April. And I think that's about when we  
21               started. As I say, it was after the  
22               January meeting.

23               Q.     There's one of the documents  
24               refers to an April 4th -- if you look at  
25               the third one in, it might be on the third

1                   JOHN MACK

2       tab in, refers to a meeting confirmation  
3       on April 4, 2012, in this building  
4       actually on the 16th floor?

5       A.     Yes.

6       Q.     Is that the kick-off meeting?

7                   MR. PRINCI: Excuse me one  
8       moment, Mr. Moloney. What Bates  
9       number is --

10                  MR. MOLONEY: Ally 014457.

11                  MR. PRINCI: Just give me a  
12       moment. I'm sorry. Go right ahead.

13       Q.     Is that the kick-off meeting?

14       A.     I don't recall. And I'm not  
15       sure that this is clear enough for me to  
16       say that it absolutely was the kick-off  
17       meeting.

18       Q.     But it's approximately around  
19       this time period?

20       A.     Yes.

21       Q.     And did the meeting actually  
22       take place in this building?

23       A.     Yes.

24       Q.     Okay. You don't need to look at  
25       that any more then. Tell me best your

1                   JOHN MACK

2       Q.     Now, the proposal. What was the  
3     numbers that he gave?

4       A.    As I recall, he had a three --  
5     \$350 million number. And again, there  
6     were some ancillary items which in our  
7     view ultimately didn't really have  
8     value -- add value, so.

9       Q.     Did you take notes at this  
10    meeting?

11      A.    Probably not.

12      Q.     Did you report what was, what  
13     you learned at the meeting to the other  
14     directors or anyone else?

15      A.    Yes.

16      Q.     And in what format?

17      A.     Verbal conversation with our  
18     attorneys at MoFo.

19      Q.     So you reported verbally to the  
20     attorneys at MoFo. Anything else?

21      A.    Well, Mr. Ilany was with me so  
22     the two of us made the report. We walked  
23     back up the street to MoFo's office to do  
24     that.

25      Q.     And were the other directors

1                   JOHN MACK

2        present so that they heard the  
3        presentation?

4        A.     No.

5        Q.     So how did other directors learn  
6        about the status at that point?

7                   MR. PRINCI: Objection as to  
8        form.

9        Q.     If they did.

10      A.    Well, we would have discussed it  
11      at a subsequent meeting of the directors.  
12      I should have added we regularly had  
13      director, independent director meetings  
14      with our independent counsel. And so that  
15      would have been a possible timeline. But  
16      it was done -- we did communicate  
17      verbally. I never put anything in  
18      writing. I don't believe Jonathan did  
19      either.

20      Q.    Were you told not to put  
21      anything in writing?

22      A.     No.

23      Q.    Now, you said you didn't make a  
24      counter at this meeting; is that correct?

25      A.     That's correct.

1                   JOHN MACK

2       Q.     So what -- what happens next?

3                   MR. PRINCI: Objection as to  
4 form.

5       A.     We discussed the proposal.

6       We -- there were -- again there was some  
7 items in the proposal that he made that  
8 were of no value as we -- as we viewed the  
9 situation. And so at a subsequent meeting  
10 Jonathan and I went back. Again, it was  
11 the same four principals and only the four  
12 principals. We went back with a  
13 counterproposal seeking to emphasize that  
14 we liked and preferred the third  
15 alternative, that is I'm going to use the  
16 word "elegant," the more elegant process,  
17 involving a plan.

18       Q.     And what was your  
19 counterproposal?

20       A.     Well, we wanted -- we pointed  
21 out why we didn't contribute or didn't  
22 assign value to certain parts of his  
23 proposal. We discussed the need to have  
24 a, you know, reasonable but I don't  
25 believe we were specific as to number, a

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1                           JOHN MACK  
2 reasonable headline number in terms of  
3 achieving credibility. And we then  
4 encouraged, the four of us, encouraged the  
5 advisors who were actually sitting in the  
6 next room to work on an agreement that  
7 mirrored that.

8                           Q. Now, what did you say in terms  
9 of the -- the reasons for a reasonable  
10 headline number? What reasons did you  
11 give to them in support of why it was in  
12 their reason for a reasonable headline  
13 number?

14                          A. Well, it would have been very  
15 simple. If the plan was going to have any  
16 credibility at all, then we needed a  
17 reasonable headline number. Otherwise  
18 we'd just get mired into a process which  
19 isn't going anywhere and which would in  
20 fact not ascribe value to the estate and  
21 to the creditors.

22                          Q. Okay. Now when you instructed  
23 the lawyers to -- to work on an agreement  
24 they weren't supposed to be working on the  
25 numbers, they were just working on the

1                   JOHN MACK

2 mechanics of implementing the deal, right?

3         A.     Yeah. We were trying to direct  
4 them to the idea that we were going to go  
5 for a plan as opposed to a free fall 363  
6 or something like that.

7         Q.     What was -- what was his  
8 response to your request?

9         A.     It was positive.

10        Q.     And did you reach an agreement  
11 on a reasonable headline number at that  
12 meeting?

13        A.     No.

14        Q.     Or a range of reasonable  
15 headline numbers?

16        A.     No, no.

17        Q.     So what happened next in terms  
18 of these negotiations?

19        A.     There would have been subsequent  
20 phone calls between the principals or  
21 among the principals to try to advance the  
22 ball.

23        Q.     Okay. And did you have those  
24 calls?

25        A.     I had calls with Mike Carpenter.

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1                   JOHN MACK

2       And Jonathan had the calls with Lenard  
3       Tessler. There were times when I was not  
4       available and Jonathan would be on lead.

5       And there would have been times when  
6       Jonathan was not available and I would be  
7       on lead.

8           Q.     How did you get Carpenter and he  
9       got Tessler? Did you flip a coin or  
10      something else?

11           MR. PRINCI: Objection as to  
12       form.

13           A.     I don't know.

14           Q.     So was -- take me through toward  
15      when you think that this kind of came  
16      together in a kind of a meeting of the  
17      minds.

18           MR. PRINCI: Objection as to  
19       form.

20           A.     It would have been in late  
21      April. And I pinpoint the time because I  
22      was traveling and I was dealing with this  
23      while riding in a shuttle the last weekend  
24      of April 2012, the last weekend. And it  
25      was awkward because I couldn't -- I could

1                   JOHN MACK

2       not be on the phone because it's a public  
3       shuttle. And so I was texting. And the  
4       deal had gotten a little off track and I  
5       had to bring it back.

6       Q.     How did the deal -- how had the  
7       deal gotten off track?

8       A.     Well, in an effort to bridge a  
9       difference of economics of about \$150  
10      million, the advisors had proposed that  
11      each of three parties, that is Ally,  
12      ResCap and our leading stalking horse  
13      bidder at the time, Nationstar, each  
14      contribute not cash necessarily but in  
15      value 50 million each for a total of 150.  
16      That was not consistent with the  
17      understanding that Mike and I had  
18      discussed. So he got in touch with me and  
19      I got back to the lawyers and said no,  
20      that that was not the deal. This is the  
21      deal. Tom Marano -- I copied Tom on the  
22      e-mail. He confirmed that that was the  
23      deal, what I said, and that put people  
24      back on track.

25       Q.     What involvement, if any, did

1                   JOHN MACK

2 Tom Marano have in these discussions?

3                 A. None. Other than we would talk  
4 to Tom about it. But he was not involved  
5 in the conversation.

6                 Q. Now, you say they had to bridge  
7 a \$150 million gap. What was the gap at  
8 that point in time? What was the bid and  
9 the ask at that point in time?

10                A. Well, it would have been around,  
11 you know, in the 750 to billion dollar or  
12 billion 1 range. That would have been the  
13 range. But obviously The Gap would be a  
14 little narrow. But they were still -- we  
15 were still working on some of the fine  
16 points. So we were in that range.

17                Q. Where did you end up in terms of  
18 a number or a range? Where did you end up  
19 in terms of --

20                A. Where did we end up?

21                Q. Yeah.

22                A. 750 of cash and then there were  
23 a couple of other components, some  
24 financing, some loan sales. So in total  
25 it was around a billion dollars.

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1                   JOHN MACK

2                 Q.     So that was the headline number  
3                   you were looking for a billion dollars, is  
4                   that fair?

5                 A.     Yes. Yes.

6                 Q.     Okay. Just going back to the  
7                   May 9 board meeting again. That's  
8                   Exhibit --

9                 A.     The which one?

10                Q.     The May 9 board meeting which is  
11                   Exhibit --

12                MR. PRINCI: 95?

13                Q.     -- 95. When -- when -- when  
14                   you -- I take it the board approved this  
15                   deal at this board meeting, is that fair?

16                A.     Yes.

17                Q.     And they approved the billion 50  
18                   Ally settlement?

19                A.     That was not brought up at the  
20                   May 9 board meeting to my knowledge.

21                Q.     Well, it's part of the package  
22                   right here.

23                A.     It's part of the key  
24                   assumptions.

25                Q.     You are saying that wasn't --

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1 JOHN MACK

2 that wasn't approved, that was just an  
3 assumption?

4 A. That's correct.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 MR. PRINCI: Objection as to  
10 form.

11 A. I actually don't know.

12 Q. Were you involved in negotiating  
13 the allocation?

14 A. No.

15 Q. Who negotiated the allocation?

16 MR. PRINCI: Objection as to  
17 form.

18 A. I don't know.

19 Q. Has that been approved by the  
20 board, the allocation?

21 A. Well, are you talking about  
22 subsequent to the filing of the petition?

23 Q. Well, at this point in time  
24 let's say was it approved?

25 A. No.

1                   JOHN MACK

2       Q.     At any point in time did they,

3                   [REDACTED]

4                   [REDACTED]

5                   [REDACTED] [REDACTED]

6       to the Holdco, the company you were a

7       director of?

8       A.     No.

9       Q.     So you don't think that  
10      allocation has ever been approved by the  
11      board as we are sitting here today?

12                  MR. PRINCI: Objection. Asked  
13      and answered.

14                  You can answer again.

15       A.     There have been two amendments  
16      to the agreement with the RMBS trustees.  
17      The first agreement, which was deemed to  
18      be ministerial and therefore not  
19      approved by the board, did have an  
20      allocation to Holdco.

21                  The second agreement, which is  
22      the one that is currently in place,  
23      specifically excludes an allocation to  
24      Holdco.

25       Q.     I think we are talking about

1                   JOHN MACK

2 apples and oranges. Let's see if we can

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7         A.     Okay.

8         Q.     So just kind of retrace it.

9         A.     To my knowledge, no part of the  
10      Ally settlement has been allocated to  
11      anybody.

12        Q.     You certainly as a board didn't  
13      make a judgment that -- that weighing the  
14      relative merits of the claims of -- that  
15      belonged to ResCap LLC versus other claims  
16      that might belong to other entities that

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20               MR. PRINCI: Objection as to  
21      form.

22        Q.     You didn't make that judgment,  
23      right?

24        A.     We did not make that judgment.

25        Q.     Now, did you understand that as

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1                   JOHN MACK

2                   part of the settlement that was approved,  
3                   the \$8.7 million settlement, that you were  
4                   also settling securities claims?

5                   A.       Yes, it was reps and warranties  
6                   and securities claims.

7                   Q.       At any point in time did you  
8                   ever learn that securities claims were not  
9                   being picked up by this \$8.7 billion  
10                  settlement?

11                  A.       No.

12                  Q.       So as far as you are concerned,  
13                  the board has not approved the deal that  
14                  does not resolve securities claims as part  
15                  of the \$8.7 billion payment?

16                  MR. PRINCI: Objection as to  
17                  form.

18                  A.       This is a slightly technical  
19                  matter. I don't know.

20                  Q.       Okay.

21                  (9019 Exhibit 100, e-mail with  
22                  attachment, Bates RC 40088324-337,  
23                  marked for identification, as of this  
24                  date.)

25                  Q.       Please look at Exhibit 100 in

110

1                           JOHN MACK  
2 your pile. Is this a document you've seen  
3 before?

4 A. Yes.

5 Q. Why did you ask for this to be  
6 prepared?

7 A. I was trying to understand --

8                           MR. PRINCI: Just can you -- I  
9 need to consult with my partner for a  
10 second. Jamie, you got a moment?

11                          Excuse me before you go on. Excuse me  
12 one moment.

13                          MR. MOLONEY: Why don't we just  
14 go off the record for a second.

15                          THE VIDEOGRAPHER: The time is  
16 11:37 a.m. We're off the record.

17                          (Brief recess.)

18                          THE VIDEOGRAPHER: The time is  
19 11:42 a.m. and we are back on the  
20 record.

21 A. I was trying to understand the  
22 deconsolidated liability structure of  
23 ResCap. The schedule that I had really  
24 asked for was labeled page 8 -- is labeled  
25 page 8. And that's the one I actually

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1                   JOHN MACK

2 focused on. They gave me a lot of other  
3 schedules, pages, in this process that I  
4 didn't really go through.

5                 Q.     Okay. We will go to that in a  
6 minute. But before we get to page 8 I  
7 have a couple of questions on -- on page  
8 5. And it says, "The assumptions  
9 presented below are consistent with the  
10 assumptions used for recovery presented in  
11 the FTI's board presentation dated  
12 4/4/12" -- do you see that? -- "with the  
13 exception of removing all intercreditor  
14 settlement assumptions."

15                 Do you see that?

16                 A.     And where are you reading?

17                 Q.     At the top of page 5. Just  
18 so -- just so we can all locate ourselves.

19                 A.     Yes. Dated 4/4? I'm sorry. I  
20 thought I heard you say something  
21 different.

22                 Q.     Okay.

23                 A.     Yes, I see that.

24                 Q.     Now, look at what they have  
25 under Ally settlement. They have a

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1 JOHN MACK

2 "payment of a billion dollars of cash;  
3 assumption or payment by Ally of up to  
4 \$400 million regulatory costs; value of  
5 \$500 million provided by Ally via TSA  
6 subservicing and parent financing;  
7 purchase by Ally through credit bid of the  
8 assets secured by Ally revolver facility."

9 Do you see those items?

10 A. Yes.

11 Q. What do they represent?

12 MR. PRINCI: Objection as to  
13 form.

14 A. What do they represent. Well,  
15 again, these were conceptual ideas of what  
16 might be in a settlement with Ally. We  
17 had not finalized it at this point.

18 Q. Had Ally provided any indication  
19 it was willing to do a settlement of this  
20 magnitude at this point in time?

21 A. Oh, no. No.

22 Q. Was this a proposal that you  
23 were making at this point in time?

24 A. We never made this as a  
25 proposal.

1                   JOHN MACK

2       Q.     Where did FTI get the -- get the  
3     idea of this -- of this to include in this  
4     chart?

5                   MR. PRINCI: Objection as to  
6     form.

7       A.     We discussed it internally but  
8     we never made this as a proposal.

9       Q.     And why not?

10                  MR. PRINCI: Objection as to  
11     form.

12       A.     I don't recall.

13       Q.     Did you ask for more or less?

14                  MR. PRINCI: Objection as to  
15     form.

16       A.     Well, these are different --  
17     these are different items. For instance,  
18     the second one, assumption of payment by  
19     Ally of up to 400 million of regulatory  
20     costs. This related to the obligations  
21     under the DoJ, AG, Fed settlement. We --  
22     we were concerned about the actual amount  
23     of costs. And so that was where that --  
24     that was where that concept came from.

25       Q.     I know. Was it -- was it -- did

1                   JOHN MACK

2       you make that request to AFI, did they  
3       pick up those costs?

4       A.     I don't know that we made the  
5       400 million. We did -- we did discuss  
6       whether they should pick up the regulatory  
7       costs.

8       Q.     What did they say?

9       A.     Well, they probably said no.

10      But then, again, we just racked it into  
11     the overall settlement.

12      Q.     The overall settlement doesn't  
13     pick up this payment, right?

14      A.     Doesn't specify that payment.

15      Q.     And it's for less than a billion  
16     dollars in cash, right?

17      A.     I'm sorry, yes.

18      Q.     And you don't get the value of  
19     the \$500 million provided by the Ally  
20     value that's listed here until this deal  
21     is actually consummated?

22      A.     Well, we do have a transaction  
23     services agreement and we do have  
24     subservicing. Whether you would assign  
25     500 million to it or not is different.

1                   JOHN MACK

2       Q.     You wouldn't -- you wouldn't  
3     assign a 500 million value, right?

4                   MR. PRINCI: Objection as to  
5     form.

6       A.     I don't think it was that much.

7       Q.     No. And they didn't purchase  
8     through credit bid the assets secured by a  
9     revolver, right?

10      A.     No. In the end we did a  
11     different structure. Those were assets  
12     that went to -- they did provide -- I'm  
13     sorry, they did provide a revolver as part  
14     of the facility. They just didn't  
15     purchase the assets necessarily.

16      Q.     Now, did Mr. Marano indicate  
17     around this point in time that he thought  
18     \$2 billion was required as the headline  
19     number to resolve this problem?

20      A.     I'm sorry, I didn't hear you.

21      Q.     Did Mr. Marano indicate to you  
22     that he thought at around this point in  
23     time April of 2012 that he thought  
24     \$2 billion was the headline number that  
25     the settlement needed to have in order to

1                   JOHN MACK

2 have credibility?

3                 A. I don't think I would  
4 characterize it that way but I do believe  
5 that he said, I know that he said  
6 \$2 billion but I don't believe I would  
7 characterize it that he said that's what  
8 it would need to be.

9                 Q. How would you characterize it?

10               A. That it would be desirable.

11               Q. And did you disagree with him?

12               A. No. I didn't disagree with him.

13               Q. Why did you agree with a  
14 settlement that was worth less than half  
15 that amount?

16               A. Well, I didn't -- just because I  
17 didn't disagree with him doesn't mean I  
18 don't think that the number we got was the  
19 fair number. I think -- I think his  
20 number was -- could also be deemed to be  
21 fair. But I'm not saying that that was  
22 the only number that it could be.

23               Q. Okay. There's a discussion down  
24 here that the reps and warranties claims  
25 were estimated at 4.1 billion. Do you see

1                   JOHN MACK

2       that?

3       A.     Yes.

4       Q.     And was that -- was that the  
5       estimate that was given by FTI to the  
6       board in April 2012 or did that number  
7       come from somewhere else?

8                   MR. PRINCI: Objection as to  
9       form.

10      A.     I don't -- I don't know  
11       specifically what the source of that  
12       number was.

13      Q.     I'd like to look at Exhibit 101.  
14                   (9019 Exhibit 101, e-mail from  
15       Michael Carpenter dated April 12,  
16       2012, Bates ALLY 0142576, marked for  
17       identification, as of this date.)

18      Q.     This is an e-mail from Michael  
19       Carpenter dated April 12, 2012, to a  
20       Caribel Ortiz-Zorn with a couple of people  
21       copied. And it refers to a conversation  
22       that he purportedly had with you that day.  
23       So could you read it to yourself, please.

24      A.     (Witness complies.)

25                   Uh-hum.

1                   JOHN MACK

2                 Q.     Now, do you recall there being a  
3                 meeting on or about April 11th where  
4                 Mr. Marano was present with Mr. Mack and  
5                 you were present?

6                 A.     No.

7                 Q.     Regardless of the date --

8                 A.     I don't -- the reason I'm -- is  
9                 whether I was present. Tom and Mike could  
10                have had a meeting. I would not have been  
11                present necessarily.

12               Q.     What do you understand he's  
13                talking about --

14               MR. PRINCI: Objection as to  
15               form.

16               Q.     -- in this e-mail, if you do?

17               A.     I don't, specifically, recall.

18               Q.     Do you recall, were you ever  
19                present at a meeting where -- where  
20                Mr. Marano said that the proposal being  
21                made by -- by -- by AFI was -- was an  
22                opening low ball?

23               A.     No.

24               Q.     Was there -- were you at a  
25                meeting where you thought Mr. Marano

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1                   JOHN MACK

2                   30, 2012, Bates RC40020521-567, marked  
3                   for identification, as of this date.)

4                 Q.     Did you attend this board  
5                   meeting?

6                 A.     Yes.

7                 Q.     Now, if you look at the back of  
8                   the document, I'm just going to focus on  
9                   one document, which is a settlement  
10                  agreement in the back of this package.  
11                  Apparently it was part of the board  
12                  package. And if you look at the black  
13                  line document, you see under Ally  
14                  contribution, which is page 6 of the black  
15                  line document.

16                A.     Yes.

17                Q.     You see 750 is crossed out and  
18                  850 is inserted?

19                A.     Yes.

20                Q.     And this is at -- as of  
21                  April 30th. How did the 850 number get  
22                  moved down from 850 to 750?

23                 MR. PRINCI: Objection as to  
24                  form.

25                A.     Well, the 850 number was our

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1                   JOHN MACK

2       effort to get a greater contribution from  
3       Ally. They never agreed to it.

4       Q. You are saying when the 850 was  
5       actually put in the agreement and 750 was  
6       crossed out and delivered to the board  
7       meeting there was at that point there was  
8       no agreement to pay 850?

9                   MR. PRINCI: Objection as to  
10          form.

11          A. That is correct. The 850 was a  
12       number that perhaps Jonathan had, but I'll  
13       take the credit for it or blame for it.  
14       It was our effort to get more money. It  
15       was never an agreement with Ally that it  
16       would be 850.

17          Q. Look at Exhibit 102 in your  
18       pile.

19                   (9019 Exhibit 102, e-mail  
20       string, RC 901900062398-400, marked  
21       for identification, as of this date.)

22          Q. You are not copied on this.

23          A. Okay. I got 102.

24          Q. It's an e-mail from Tim  
25       Devine --

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1                   JOHN MACK

2         A.     Okay.

3         Q.     -- to Tammy Hamzephour.

4         A.     Uh-hum.

5         Q.     I think you indicated you don't  
6 know who Tim Devine is?

7         A.     I have never met Tim Devine.

8         Q.     Were you aware that he was a,  
9 the head of litigation for AFI?

10                MR. PRINCI: Objection. Asked  
11 and answered.

12                You can answer again.

13         A.     No. I -- I -- I'm not sure I  
14 can tell you what he was or is.

15         Q.     And you know who Tammy  
16 Hamzephour is, right?

17         A.     I do know Tammy, yes.

18         Q.     It says "Prep for KP," I think  
19 that probably means Kathy Patrick. But in  
20 any event, looking down it says in the --  
21 this is dated April 23. It says, in the  
22 second paragraph it says, "Finally I  
23 recommend we use 750 rather than 1 billion  
24 as potentially AFI contribution. I don't  
25 have a basis to say it should be a

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1                   JOHN MACK

2 billion, and we better leave some room for  
3 negotiation. If we want to use a billion,  
4 we will need clearance from AFI and I  
5 haven't spoken to Mike."

6                   Do you see that?

7         A.     Yes.

8         Q.     Now, was Kathy Patrick  
9 recommending -- negotiating the AFI  
10 contribution or were you negotiating it?

11                  MR. PRINCI: Objection as to  
12 form.

13         A.     I thought I was.

14         Q.     Okay.

15         A.     I'm unaware of this.

16         Q.     This seems to imply that they  
17 would have gone up higher if Kathy Patrick  
18 had asked for more, doesn't it?

19                  MR. PRINCI: Objection as to  
20 form. Lack of foundation.

21         A.     I -- I don't know.

22         Q.     The language it would be better  
23 to have some room for negotiation implies  
24 that you are giving an offer less than  
25 your bottom line, right?

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1                   JOHN MACK

2                   MR. PRINCI: I'm not going to  
3                   let you argue with him on this stuff.

4                   MR. MOLONEY: He may answer.

5                   MR. PRINCI: No, I'm going to  
6                   direct him not to answer. Stop  
7                   arguing with him.

8                   Q. You may answer.

9                   MR. PRINCI: Don't answer the  
10                  question. Ask an intelligent question  
11                  where you are not arguing with him.

12                  Q. At this point in time, as of  
13                  April 23, hadn't there been an agreement,  
14                  general agreement, that they would put a  
15                  billion dollars on the table to settle the  
16                  ResCap situation?

17                  MR. PRINCI: Objection as to  
18                  form.

19                  A. I don't think so.

20                  Q. Okay. But you are not sure?

21                  A. That's correct.

22                  Q. Okay. I'd like to look at  
23                  Exhibit 104.

24                  (9019 Exhibit 104, two e-mails,  
25                  Bates ALLY 0226069, marked for

1                   JOHN MACK

2                   identification, as of this date.)

3                   Q.       And this is two e-mails. The  
4                   first is dated May 5, 2012. It's from  
5                   Larren M. Nashelsky to Ray Schrock at  
6                   Kirkland & Ellis and there's a response  
7                   from Kirkland & Ellis dated the same day,  
8                   from Mr. Schrock the same day. You got to  
9                   read the bottom first and then read the  
10                  top to follow the chain.

11                  A.       Yes.

12                  Q.       Now, as of this point in time,  
13                  May 5, had the contribution been fixed  
14                  that was going to be paid by AFI?

15                  A.       I honestly can't tell you  
16                  whether it was May 5 or a little bit later  
17                  or a little bit earlier but it was all  
18                  within the range of, you know, 750 to 850.  
19                  That's the number here. I'm not sure why  
20                  that's the way it is.

21                  Q.       Do you know, and I'm not sure  
22                  you would know, but if you do know, tell  
23                  us, do you know whether it was K&E who was  
24                  turning the drafts of the settlement  
25                  agreement as opposed to MoFo?

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1                   JOHN MACK

2         A.     No, I don't recall.

3         Q.     Do you know why Marano would  
4     feel that he would need an explanation as  
5     to what the amount was at that point in  
6     time?

7                   MR. PRINCI: Objection as to  
8     form. Lack of foundation.

9         A.     No.

10        Q.     Let's go to exhibit, next  
11     exhibit which is exhibit --

12        A.     105?

13        Q.     Yes.

14                   (9019 Exhibit 105, two e-mails,  
15     Bates ALLY 0141967, marked for  
16     identification, as of this date.)

17        A.     Uh-hum.

18        Q.     It's an e-mail, two e-mails the  
19     top one is from Dan Soto dated May 8,  
20     2012. The bottom one is from Jeff Brown  
21     dated May 8, 2012. And I want to focus on  
22     the penultimate paragraph of the e-mail,  
23     of the bottom e-mail from Jeff Brown. It  
24     says "Also I think, even as Mike once  
25     shared to you and Jim, originally ResCap

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1                   JOHN MACK  
2 presented an 8 or \$9 billion claim against  
3 Ally that is now totally gone."

4                   Do you see that statement?

5                   A.     Yes.

6                   Q.     What knowledge, if any, do you  
7 have of an 8 to \$9 billion claim that  
8 ResCap presented to Ally?

9                   A.     I would have to speculate that  
10 in an early meeting between MoFo and K&E,  
11 that that would have been a number that we  
12 presented them.

13                  Q.     Did MoFo -- did you ever present  
14 an 8 or \$9 billion ask?

15                  A.     Did I? No.

16                  Q.     Why not?

17                  MR. PRINCI: Objection as to  
18 form.

19                  A.     These are legal matters. I'm  
20 not going to discuss legal matters with  
21 principals.

22                  Q.     Okay. So you weren't settling  
23 legal claims?

24                  A.     No.

25                  MR. PRINCI: Objection as to

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1                   JOHN MACK

2 form. Asked and answered.

3 Q. Thank you. Okay. Now --

4 MR. MOLONEY: Why don't we take  
5 a short break.

6 THE VIDEOGRAPHER: The time is  
7 12:05 p.m. and we are off the record.

8 (Whereupon, there is a recess in  
9 the proceedings.)

10                  THE VIDEOGRAPHER: The time is  
11 12:13 p.m., and we are back on the  
12 record.

13 Q. Would you look at Exhibit 108 in  
14 your pile, please.

15                  (9019 Exhibit 108, e-mail, Bates  
16 RC 901900093502 through 503, marked  
17 for identification, as of this date.)

18 A. Yes.

19 Q. It's an e-mail from Jamie  
20 Levitt, copying a bunch of people. And  
21 she's talking about a second amendment to  
22 the settlement agreement. This is a topic  
23 we covered, I think very briefly, earlier.

24 A. Yes.

25 Q. And in paragraph 1 it says --

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1                   JOHN MACK

2                   MR. PRINCI: This is an e-mail  
3                   from Jamie Levitt?

4                   MR. MOLONEY: Yes.

5                   MR. PRINCI: Sorry. Got it.

6                   Q. Paragraph 1 you say, "We cannot  
7                   agree to your addition of additional  
8                   debtors to the allowed claim. Our deal is  
9                   that the allowed claim is against GMACM  
10                  and ROC. We allocated the settlement  
11                  based on origination, and it can dilute  
12                  and alter recoveries, if we give the  
13                  allowed claims as you proposed."

14                  Do you see that?

15                  A. Yes.

16                  Q. That's consistent with your  
17                  understanding as well, is that the deal,  
18                  the initial deal as done, was that there  
19                  was not going to be any of the R&W claims  
20                  allocated to the holding company that you  
21                  were a director of, right?

22                  MR. PRINCI: Objection as to  
23                  form, lack of foundation.

24                  A. Yes. The Holdco was not going  
25                  to be engaged.

1                   JOHN MACK

2       Q.     And did you ever approve a  
3     change to that original deal?

4       A.     This was the change that we  
5     approved. There was a previous amendment  
6     which, as I say, was deemed ministerial,  
7     we did not approve.

8       Q.     You say the board actually  
9     approved the change to eliminate the -- to  
10    assume the liability for Holdco?

11      A.     Yeah. Because, again, it was a  
12    capped claim of 8.7 billion. They were  
13    released, Holdco was both released and  
14    wasn't going to be engaged in the process.

15                  So, yeah, that was the  
16    recommendation of our advisors, both sets  
17    of legal advisors, both the MoFo team and  
18    the Morrison & Cohen team.

19      Q.     At what point in time did this  
20    happen?

21      A.     I believe our approval, we had a  
22    meeting, and we approved this in  
23    September.

24      Q.     In September of, of this year?

25      A.     2000 -- yes.

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1                   JOHN MACK

2                   Now, that's why this, the date  
3                   on this e-mail makes me question whether  
4                   this was the final.

5                   Q.        Okay. You approved the final  
6                   deal?

7                   A.        We approved the final deal. We  
8                   didn't approve any interim deals.

9                   Q.        There was an interim deal that  
10                  provided for a Holdco, eliminated your  
11                  release and provided for a Holdco  
12                  election, a potential claim of  
13                  \$1.7 million?

14                  A.        I don't recall.

15                  Q.        You didn't approve that deal?

16                  A.        I don't recall.

17                  Q.        Why did you approve any change  
18                  from the original deal that allowed ResCap  
19                  LLC to obtain a release?

20                  MR. PRINCI: Objection as to  
21                  form.

22                  A.        Again, you are into a little bit  
23                  of a legal issue, and I relied on my  
24                  advisors with regard to the legal issues.  
25                  The economics didn't seem to change, to

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1                   JOHN MACK

2 me.

3                 Q. Well, from the perspective --  
4 going back to the exhibit we looked at  
5 earlier, the May 9th exhibit. Can you  
6 pull that up again?

7                 A. May 9th?

8                 Q. Yeah.

9                 A. What exhibit?

10                MR. PRINCI: Which exhibit  
11 number?

12                MR. MOLONEY: It's the board  
13 meeting. It's Exhibit Number 95.

14                A. Okay, I have 95.

15                Q. Look at the executive summary,  
16 key assumptions.

17                Do you see that?

18                A. Yes.

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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1 JOHN MACK  
2 [REDACTED] [REDACTED]  
3 [REDACTED] [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] [REDACTED] [REDACTED]  
9 [REDACTED] [REDACTED]  
10 [REDACTED] [REDACTED]  
11 [REDACTED] [REDACTED] [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED] [REDACTED] [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED] [REDACTED]  
18 [REDACTED]  
19 [REDACTED] --- [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED] [REDACTED] [REDACTED]  
22 [REDACTED] [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED] [REDACTED]  
25 [REDACTED] [REDACTED]

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1 JOHN MACK

2 [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED]

9 [REDACTED]

10 Q. Did you think you had a  
11 fiduciary duty to those bondholders?

12 A. I think I have a fiduciary duty  
13 to all bondholders, not specifically the  
14 senior unsecured noteholders.

15 Q. In terms of your duty -- but  
16 that duty didn't exclude them, I assume,  
17 right?

18 A. Correct. It did not exclude  
19 them, it would include, them, but.

20 Q. But you never thought about  
21 whether this deal was fair, from their  
22 perspective?

23 MR. PRINCI: Objection as to  
24 form, lack of foundation.

25 A. I never thought about the